

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3028

BY DELEGATE PRITT

[Introduced March 09, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §15-5-6 of the Code of West Virginia, 1931, as amended, relating
 2 to prohibit the emergency powers of the Governor from restricting the ability of West
 3 Virginia citizens to enter or exit the State of West Virginia; and providing right to injunctive
 4 relief.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY
 MANAGEMENT.**

§15-5-6. Emergency powers of Governor.

1 (a) The provisions of this section are operative only during the existence of a state of
 2 emergency or state of preparedness. The existence of a state of emergency or state of
 3 preparedness may be proclaimed by the Governor or by concurrent resolution of the Legislature
 4 if the Governor in the proclamation, or the Legislature in the resolution, finds that an attack upon
 5 the United States has occurred or is anticipated in the immediate future, or that a natural or man-
 6 made disaster of major proportions has actually occurred or is imminent within the state, or that
 7 an emergency exists or may be imminent due to a large-scale threat beyond local control, and
 8 that the safety and welfare of the inhabitants of this state require an invocation of the provisions
 9 of this section.

10 (b) Any state of emergency or state of preparedness, whether proclaimed by the Governor
 11 or by the Legislature, terminates upon the proclamation of the termination by the Governor, or the
 12 passage by the Legislature of a concurrent resolution terminating the state of emergency or state
 13 of preparedness: *Provided*, That in no case ~~shall~~ may a state of preparedness last longer than 30
 14 days.

15 (c) So long as a state of emergency or state of preparedness exists, the Governor has
 16 and may exercise the following additional emergency powers:

17 (1) To enforce all laws and rules relating to the provision of emergency services and to

18 assume direct operational control of any or all emergency service forces and helpers in the state;

19 (2) To sell, lend, lease, give, transfer, or deliver materials or perform functions relating to
20 emergency services on terms and conditions he or she prescribes and without regard to the
21 limitations of any existing law and to account to the State Treasurer for any funds received for the
22 property;

23 (3) To procure materials and facilities for emergency services by purchase, condemnation
24 under the provisions of chapter 54 of this code or seizure pending institution of condemnation
25 proceedings within 30 days from the seizing thereof and to construct, lease, transport, store,
26 maintain, renovate, or distribute the materials and facilities. Compensation for property so
27 procured shall be made in the manner provided in chapter 54 of this code;

28 (4) To obtain the services of necessary personnel, required during the emergency, and to
29 compensate them for their services from his or her contingent funds or other funds available to
30 him or her;

31 (5) To provide and compel the evacuation of all or part of the population from any stricken
32 or threatened area within the state and to take steps that are necessary for the receipt and care
33 of the evacuees;

34 (6) To control ingress and egress to and from a disaster area or an area where large-scale
35 threat exists, the movement of persons within the area and the occupancy of premises therein:
36 Provided, That this authority may not restrict the ability of West Virginia citizens to enter or exit
37 the State of West Virginia. Any person aggrieved by a breach of this subdivision may seek
38 injunctive relief in the Circuit Court of Kanawha County and, if successful, is entitled to an award
39 of attorney fees and damages;

40 (7) To suspend the provisions of any regulatory statute prescribing the procedures for
41 conduct of state business or the orders, rules of any state agency, if strict compliance therewith
42 would in any way prevent, hinder, or delay necessary action in coping with the emergency;

43 (8) To use available resources of the state and of its political subdivisions that are

44 reasonably necessary to cope with the emergency;

45 (9) To suspend or limit the sale, dispensing or transportation of alcoholic beverages,
46 explosives, and combustibles;

47 (10) To make provision for the availability and use of temporary emergency housing; and

48 (11) To perform and exercise other functions, powers and duties that are necessary to
49 promote and secure the safety and protection of the civilian population.

50 (d) The declaration of a state of preparedness has the same effect as a declaration of a
51 state of emergency for the purposes of the Emergency Management Assistance Compact
52 established in §15-5-22 of this code and the Statewide Mutual Aid Systems set forth in §15-5-28
53 of this code.

54 (e) The powers granted under this section do not authorize any action that would violate
55 the prohibitions of §15-5-19a of this code.

NOTE: The purpose of this bill is to prohibit the emergency powers of the Governor from restricting the ability of West Virginia citizens to enter or exit the State of West Virginia.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.